STATE OF MICHIGAN

COURT OF APPEALS

In re Estates of Norman Conn and Ethel Conn.

TRACEY CONN-BURNSTEIN,

Petitioner-Appellant,

v

ALISON MANIEX, Personal Representative of the Estates of ETHEL CONN and NORMAN CONN,

Respondent-Appellee,

and

BRIAN CONN,

Interested Party.

UNPUBLISHED
October 15, 2009

No. 283118
Oakland Probate Court
LC No.'s 05-296755-DE
05-296594-DE
01-276552-GD
01-276553-CV
01-267554-GD
01-276555-CV

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

Petitioner appeals from a probate court order denying her request to re-open the decedent estates of her parents and denying her request to lift the suppression orders applicable to their various probate court proceedings. We affirm.

In 2001, petitioner and respondent, sisters, filed petitions in the probate court seeking the appointment of guardians and conservators for their parents, Ethel and Norman Conn. The basis for the petitions with respect to Mrs. Conn was the sisters' allegations that their mother had health problems that she was not addressing, and a gambling problem that led to the depletion of her assets and potential criminal charges in Nevada. The basis for the petitions with respect to their father was essentially that he suffered from Alzheimer's disease, and that he was unable to adequately care for himself or protect his assets. The petitions were granted and the probate court suppressed the files, apparently to protect the Conns from public embarrassment.

Various conservators and guardians were appointed for the Conns over the course of the probate proceedings, and petitioner objected to the appointments and/or the actions of nearly all of the appointees, including that of respondent, as guardian of the Conns. Accountings concerning the Conns' assets were filed throughout the many proceedings, to which petitioner objected. After hearings on nearly each accounting, the probate court entered orders approving them.

In November of 2002, petitioner and respondent (along with their brother, Brian Conn) stipulated to the termination of the conservatorship and the guardianship of Mrs. Conn. Mr. Conn's guardianship and conservatorship, however, continued until his death on November 11, 2004. After his death, Mr. Conn's co-conservators filed a final accounting. Over the objections of respondent, the probate court found the final accounting to be accurate.

On December 30, 2004, respondent filed a petition for informal probate of Mr. Conn's estate, and for the appointment of a personal representative for the estate. Respondent noted that Mr. Conn's will, dated December 20, 1996, and a codicil to the same, dated June 20, 1997, were already in the probate court's possession. Shortly thereafter, petitioner also sought to have Mr. Conn's estate probated, and asked the probate court to appoint her as personal representative. Petitioner attached Mr. Conn's purported last will, dated May 13, 2001, to her petition. The will left everything he had, real or personal property, tangible or otherwise, to his wife, Mrs. Conn. Respondent agreed that the May 13, 2001, holographic will should be accepted as Mr. Conn's last will. Respondent was appointed the personal representative of the estate.

In June of 2005, respondent filed an inventory regarding Mr. Conn's decedent estate, indicating that his assets were unknown. A year later, respondent's fiduciary powers were suspended due to her failure to file required documents and to pay an inventory fee. Finally in July of 2006, Mr. Conn's decedent estate file was administratively closed by the probate court because of the failure to file documents and the unpaid fee.

Unfortunately, Mrs. Conn died on November 17, 2004, just six days after Mr. Conn's death. On January 18, 2005, petitioner filed a petition for appointment of a personal representative of the decedent estate of Mrs. Conn and for the determination of heirs. The petition alleged that Mrs. Conn had died intestate. A few days later, petitioner was appointed special personal representative of the estate.

Respondent filed objections to petitioner's appointment, advising the probate court that at the time of her death, Mrs. Conn was a resident of Texas, not Michigan. Respondent also asserted that a petition and a copy of Mrs. Conn's will had already been filed in a Texas court, and that her brother, Brian Conn, had been appointed personal representative. A Texas court order "admitting will to probate and authorizing letters testamentary" was submitted to the probate court. The Texas court order, entered on January 31, 2005, determined that Texas was the proper venue and that the court had jurisdiction over Mrs. Conn's decedent estate. The Texas court also found that Mrs. Conn died with a valid will in place. The will, a copy of which appears in the record, leaves petitioner a single dollar.

In February of 2007, after a series of disputes concerning Mrs. Conn's decedent estate, one of which concerned petitioner's request for ancillary jurisdiction in Michigan, it appears that Mrs. Conn's Michigan decedent estate was closed.[1]

Before the end of 2007, petitioner sought to have all six of the Conns' estates reopened (decedent, guardianship, and conservatorship), asserting that there were Michigan assets unaccounted for in the estates. Petitioner also moved/petitioned to have the suppression orders governing the estates lifted. The probate court denied petitioner's requests and this appeal followed.

On appeal, petitioner first asserts that the existence of unaccounted-for Michigan assets (personal property such as art, collectibles, etc.) requires the reopening of the decedent estates of both Mr. and Mrs. Conn. We disagree.

At the outset, we note that petitioner's brief contains very little by way of argument, and no citation to binding authority to support her position. Attached to the brief are a multitude of exhibits that are not referenced in the brief or explained. Most importantly, petitioner's brief fails to identify any specific error on the part of the probate court in denying the requests to reopen the estates. Petitioner merely makes a blanket statement that the estates should be reopened so she can essentially investigate the alleged unaccounted-for assets of her parents. It is not sufficient for a party to simply "announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Where a party has failed to properly address the merits of his claim, it is deemed abandoned. *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004). Because petitioner's brief is seriously deficient in all material respects, we find that she has abandoned her first claim of error.

In any event, we will briefly consider what we believe to be petitioner's claims of error. We note that a probate court's findings of fact are reviewed for clear error, MCR 2.613(C); *Gumma v D & T Construction Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999), while its substantive decisions are reviewed for an abuse of discretion, *In re Estate of Weber*, 257 Mich App 558, 560; 669 NW2d 288 (2003).

With respect to Mrs. Conn, it is undisputed that in November of 2004, a petition was filed in Texas to open her decedent estate. Texas assumed jurisdiction over the estate on January 31, 2005, with the entry of an order "admitting will to probate and authorizing letters testamentary." The order indicates that the Texas court heard evidence, reviewed the will and other documents, and determined that the Texas venue was proper and that it had jurisdiction over Mrs. Conn's estate.

[1] The probate court order does not specifically provide for the closure of Mrs. Conn's decedent estate, but it appears to have that effect.

Nearly two months after the petition regarding Mrs. Conn's decedent estate had been filed in Texas, petitioner sought to open a decedent estate for Mrs. Conn in Michigan, asserting that Mrs. Conn was domiciled in Michigan at the time of her death. MCL 700.3202 states:

> If conflicting claims as to the decedent's domicile are made in a formal testacy or appointment proceeding commenced in this state and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state shall stay, dismiss, or permit suitable amendment in the proceeding in this state unless it is determined that this state's proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced is determinative in this state's proceeding.

As the Texas proceeding commenced prior to the Michigan proceeding, the probate court had the authority to stay, dismiss, or amend the Michigan proceeding pursuant to the above statute. Furthermore, in January of 2005, the Texas court determined that Mrs. Conn was domiciled in Texas at the time of her death and accepted her will as valid. The probate court made no determination as to Mrs. Conn's domicile. Since the determination of domicile in the first commenced proceeding (Texas) was determinative, according to MCL 700.3202, the probate court properly closed Mrs. Conn's Michigan decedent estate. The probate court did not abuse its discretion in refusing the request to re-open Mrs. Conn's decedent estate.

With respect to Mr. Conn's decedent estate, while one accounting listing Mr. Conn's assets as "unknown" was filed with the probate court, a final accounting was filed in Mr. Conn's conservator/guardian files following his death. Petitioner filed objections alleging that not all assets were included in the accounting. Following a hearing, the probate court accepted the accounting as final. Petitioner did not appeal the probate court's acceptance of the accounting, even though, pursuant to MCR 5.801(B)(1)(u), the probate court's decision was deemed a final order appealable of right to this Court.

The Legislature recognized the need for finality following a conservator's account to the probate court. MCL 700.5418 provides:

> (1) A conservator shall account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal, and at other times as the court directs. On termination of the protected individual's minority or disability, a conservator shall account to the court or to the formerly protected individual or that individual's successors. Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection with the accounts, and an order, after notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected individual or the protected individual's successors relating to the conservatorship. . .

Accordingly, all of the orders entered accepting the accountings performed in Mr. Conn's conservator and guardian files adjudicated any liabilities concerning the matters considered in connection with the accounts. Where an account is allowed and settled in the probate court, and no appeal is taken from the order allowing it, the matters thus determined are *res adjudicata*.

Lawrence v Hathaway, 128 Mich 119, 123; 87 NW 84 (1901). Petitioner's request to reopen Mr. Conn's decedent estate, apparently being premised primarily upon alleged inaccurate accountings filed in his guardian and conservator files, and petitioner having failed to appeal the acceptance of the accountings, the probate court did not err in denying the request.

Petitioner next contends that the orders suppressing all of the estates of Mr. and Mrs. Conn "should be set aside so that the Michigan assets, accountings, and actions of all fiduciaries, and the rights of all interested persons may be properly disclosed and protected." Once again, petitioner's argument on this issue is fatally deficient.

Petitioner simply makes the statement that the suppression orders should be set aside because all "interested parties" need to know why certain assets are unaccounted-for. It appears that petitioner initially agreed to the entry of the suppression orders to protect her parents from embarrassment and humiliation. Therefore, petitioner does not appear to claim an error in the probate court's entry of the suppression orders. Additionally, petitioner does not articulate a specific error concerning the probate court's later refusals to lift the suppression order. Finally, petitioner cites no case law, statute or court rule in support of her claim.

As previously stated, where a party has failed to properly address the merits of his claim, it is deemed abandoned. *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004). Because petitioner has failed to properly address the merits of her claim regarding the suppression orders, we deem this claim abandoned and decline to address it.

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher